

Assembly Bill No. 477

Passed the Assembly September 11, 2013

Chief Clerk of the Assembly

Passed the Senate September 9, 2013

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 1208 to the Civil Code, to add Section 8215 to the Government Code, and to amend Sections 15632, 15633, 15634, 15637, 15640, and 15655.5 of, and to add Section 15630.2 to, the Welfare and Institutions Code, relating to elder and dependent adult abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 477, Chau. Elder and dependent adult abuse: mandated reporting.

Existing law, the Financial Elder Abuse Reporting Act of 2005, establishes procedures for the reporting of suspected financial abuse of an elder or dependent adult, as defined. These procedures require mandated reporters of suspected financial abuse of an elder or dependent adult, as defined, to report known or suspected instances of financial abuse of an elder or dependent adult, as specified. Existing law makes a violation of the reporting requirements subject to a civil penalty.

This bill would include notaries public in the definition of mandated reporters of suspected financial abuse of an elder or dependent adult and would require a notary public, if he or she has observed or has knowledge of suspected financial abuse in connection with providing notary services, to report the known or suspected instance of financial abuse. The bill would provide that this requirement is applicable only when the notary public knows that the victim of the suspected financial abuse is an elder or dependent adult.

Existing law makes specified reports, including reports of known or suspected financial abuse of an elder or dependent adult, confidential. Any violation of the confidentiality of these reports is a misdemeanor.

This bill would extend that confidentiality to a notary public's report of known or suspected financial abuse of an elder or dependent adult. By increasing the scope of a crime, the bill would impose a state-mandated local program.

Existing law authorizes a care custodian, clergy member, health practitioner, and an employee of an adult protective services agency

or a law enforcement agency to present a claim to the California Victim Compensation and Government Claims Board for reasonable attorney's fees incurred in any action against that person for making a report of known or suspected abuse of an elder or dependent adult, as specified.

This bill would additionally authorize a notary public to present a claim to the board for reasonable attorney's fees incurred in an action against that person for making a report pursuant to these provisions.

Existing law requires a county adult protective services agency to report every known or suspected instance of abuse of an elder or dependent adult, as specified, to any public agency given responsibility for investigation in that jurisdiction of cases of elder and dependent adult abuse. Existing law also requires a county adult protective services agency to provide mandated reporters of suspected financial abuse of an elder or dependent adult with instructional materials regarding abuse and neglect of an elder or dependent adult and their obligation to report under these provisions.

The bill would require a county adult protective services agency to additionally report a known or suspected instance of abuse reported by a notary public and to additionally provide instructional materials to notaries public. By increasing the duties of local agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. Section 1208 is added to the Civil Code, to read:

1208. A notary public performing services under this article shall comply with the reporting mandate specified in Section 15630.2 of the Welfare and Institutions Code.

SEC. 2. Section 8215 is added to the Government Code, to read:

8215. A notary public shall comply with the reporting mandate specified in Section 15630.2 of the Welfare and Institutions Code. Any violation of that reporting mandate shall be punished pursuant to that section.

SEC. 3. Section 15630.2 is added to the Welfare and Institutions Code, to read:

15630.2. (a) As used in this section, “mandated reporter of suspected financial abuse of an elder or dependent adult” or “mandated reporter” means notaries public.

(b) As used in this section, “financial abuse” has the same meaning as in Section 15610.30.

(c) (1) Any notary public who, in connection with providing notary services, has observed or has knowledge of suspected financial abuse of an elder or dependent adult shall report the known or suspected instance of financial abuse by telephone or through a confidential Internet reporting tool, as authorized pursuant to Section 15658, immediately, or as soon as practicably possible. If reported by telephone, a written report shall be sent, or an Internet report shall be made through the confidential Internet reporting tool established in Section 15658, within two working days to the local adult protective services agency or the local law enforcement agency.

(2) A notary public who is also an officer or employee of a financial institution is subject to the reporting requirement under Section 15630.1 and not the reporting requirement under this section.

(3) When two or more mandated reporters jointly have knowledge or reasonably suspect that financial abuse of an elder or a dependent adult for which the report is mandated has occurred, and when there is an agreement among them, the telephone report or Internet report, as authorized by Section 15658, may be made by a member of the reporting team who is selected by mutual agreement. A single report may be made and signed by the selected member of the reporting team. Any member of the team who has

knowledge that the member designated to report has failed to do so shall thereafter make that report.

(4) If the mandated reporter knows that the elder or dependent adult resides in a long-term care facility, as defined in Section 15610.47, the report shall be made to the local ombudsman or local law enforcement agency.

(5) A notary public has no duty to review any document beyond those specified in Section 8205 of the Government Code.

(d) An allegation by the elder or dependent adult, or any other person, that financial abuse has occurred is not sufficient to trigger the reporting requirement under this section if both of the following conditions are met:

(1) The mandated reporter of suspected financial abuse of an elder or dependent adult is aware of no other corroborating or independent evidence of the alleged financial abuse of an elder or dependent adult. The mandated reporter of suspected financial abuse of an elder or dependent adult is not required to investigate any accusations.

(2) In the exercise of his or her professional judgment, the mandated reporter of suspected financial abuse of an elder or dependent adult reasonably believes that financial abuse of an elder or dependent adult did not occur.

(e) Failure to report financial abuse under this section shall be subject to a civil penalty not exceeding one thousand dollars (\$1,000) or if the failure to report is willful, a civil penalty not exceeding five thousand dollars (\$5,000), which shall be paid by the mandated reporter to the party bringing the action. Subdivision (h) of Section 15630 shall not apply to violations of this section.

(f) The civil penalty provided for in subdivision (e) shall be recovered only in a civil action brought against the mandated reporter by the Attorney General, district attorney, or county counsel. No action shall be brought under this section by any person other than the Attorney General, district attorney, or county counsel. Multiple actions for the civil penalty shall not be brought for the same violation.

(g) As used in this section, “suspected financial abuse of an elder or dependent adult” occurs when a person who is required to report under subdivision (c) observes or has knowledge of behavior or unusual circumstances or transactions, or a pattern of behavior or unusual circumstances or transactions, that would lead

an individual with like training or experience, based on the same facts, to form a reasonable belief that an elder or dependent adult is the victim of financial abuse as defined in Section 15610.30.

(h) Reports of suspected financial abuse of an elder or dependent adult made by a mandated reporter pursuant to this section are covered under subdivision (b) of Section 47 of the Civil Code.

(i) This section shall apply only when the notary public knows that the victim of the suspected financial abuse is an elder or dependent adult.

SEC. 4. Section 15632 of the Welfare and Institutions Code is amended to read:

15632. (a) In any court proceeding or administrative hearing, neither the physician-patient privilege nor the psychotherapist-patient privilege applies to the specific information reported pursuant to this chapter.

(b) Nothing in this chapter shall require the disclosure of information protected by the attorney-client privilege or the duty under subdivision (e) of Section 6068 of the Business and Professions Code.

SEC. 5. Section 15633 of the Welfare and Institutions Code is amended to read:

15633. (a) The reports made pursuant to Sections 15630, 15630.1, 15630.2, and 15631 shall be confidential and may be disclosed only as provided in subdivision (b). Any violation of the confidentiality required by this chapter is a misdemeanor punishable by not more than six months in the county jail, by a fine of five hundred dollars (\$500), or by both that fine and imprisonment.

(b) Reports of suspected abuse of an elder or dependent adult and information contained therein may be disclosed only to the following:

(1) Persons or agencies to whom disclosure of information or the identity of the reporting party is permitted under Section 15633.5.

(2) (A) Persons who are trained and qualified to serve on multidisciplinary personnel teams may disclose to one another information and records that are relevant to the prevention, identification, or treatment of abuse of elderly or dependent persons.

(B) Except as provided in subparagraph (A), any personnel of the multidisciplinary team or agency that receives information pursuant to this chapter, shall be under the same obligations and subject to the same confidentiality penalties as the person disclosing or providing that information. The information obtained shall be maintained in a manner that ensures the maximum protection of privacy and confidentiality rights.

(c) This section shall not be construed to allow disclosure of any reports or records relevant to the reports of abuse of an elder or dependent adult if the disclosure would be prohibited by any other provisions of state or federal law applicable to the reports or records relevant to the reports of the abuse, nor shall it be construed to prohibit the disclosure by a financial institution or notary public of any reports or records relevant to the reports of abuse of an elder or dependent adult if the disclosure would be required of a financial institution or notary public by otherwise applicable state or federal law or court order.

SEC. 6. Section 15634 of the Welfare and Institutions Code is amended to read:

15634. (a) A care custodian, clergy member, health practitioner, mandated reporter of suspected financial abuse of an elder or dependent adult, or employee of an adult protective services agency or a local law enforcement agency who reports a known or suspected instance of abuse of an elder or dependent adult shall not be civilly or criminally liable for any report required or authorized by this chapter. Any other person reporting a known or suspected instance of abuse of an elder or dependent adult shall not incur civil or criminal liability as a result of any report authorized by this chapter, unless it can be proven that a false report was made and the person knew that the report was false. A person required to make a report pursuant to this chapter, or any person taking photographs at his or her discretion, shall not incur any civil or criminal liability for taking photographs of a suspected victim of abuse of an elder or dependent adult or causing photographs to be taken of a suspected victim or for disseminating the photographs with the reports required by this chapter. However, this section shall not be construed to grant immunity from this liability with respect to any other use of the photographs.

(b) A care custodian, clergy member, health practitioner, mandated reporter of suspected financial abuse of an elder or

dependent adult, or employee of an adult protective services agency or a local law enforcement agency who, pursuant to a request from an adult protective services agency or a local law enforcement agency investigating a report of known or suspected abuse of an elder or dependent adult, provides the requesting agency with access to the victim of a known or suspected instance of abuse of an elder or dependent adult, shall not incur civil or criminal liability as a result of providing that access.

(c) The Legislature finds that, even though it has provided immunity from liability to persons required to report abuse of an elder or dependent adult, immunity does not eliminate the possibility that actions may be brought against those persons based upon required reports of abuse. In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibilities, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions. Therefore, a care custodian, clergy member, health practitioner, notary public, or an employee of an adult protective services agency or a local law enforcement agency may present to the California Victim Compensation and Government Claims Board a claim for reasonable attorney's fees incurred in any action against that person on the basis of making a report required or authorized by this chapter if the court has dismissed the action upon a demurrer or motion for summary judgment made by that person, or if he or she prevails in the action. The California Victim Compensation and Government Claims Board shall allow that claim if the requirements of this subdivision are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorney's fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars (\$50,000). This subdivision shall not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.

SEC. 7. Section 15637 of the Welfare and Institutions Code is amended to read:

15637. In any court proceeding or administrative hearing, neither the physician-patient privilege nor the psychotherapist-patient privilege applies to the specific information required to be reported pursuant to this chapter. Nothing in this

chapter shall require the disclosure of information protected by the attorney-client privilege or the duty under subdivision (e) of Section 6068 of the Business and Professions Code.

SEC. 8. Section 15640 of the Welfare and Institutions Code is amended to read:

15640. (a) (1) An adult protective services agency shall immediately, or as soon as practically possible, report by telephone to the law enforcement agency having jurisdiction over the case any known or suspected instance of criminal activity, and to any public agency given responsibility for investigation in that jurisdiction of cases of elder and dependent adult abuse, every known or suspected instance of abuse of an elder or dependent adult pursuant to Section 15630, 15630.1, or 15630.2. A county adult protective services agency shall also send a written report thereof within two working days of receiving the information concerning the incident to each agency to which it is required to make a telephone report under this subdivision. Prior to making any cross-report of allegations of financial abuse to law enforcement agencies, an adult protective services agency shall first determine whether there is reasonable suspicion of any criminal activity.

(2) If an adult protective services agency receives a report of abuse alleged to have occurred in a long-term care facility, that adult protective services agency shall immediately inform the person making the report that he or she is required to make the report to the long-term care ombudsman program or to a local law enforcement agency. The adult protective services agency shall not accept the report by telephone but shall forward any written report received to the long-term care ombudsman.

(b) If an adult protective services agency or local law enforcement agency or ombudsman program receiving a report of known or suspected elder or dependent adult abuse determines, pursuant to its investigation, that the abuse is being committed by a health practitioner licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, or any related initiative act, or by a person purporting to be a licensee, the adult protective services agency or local law enforcement agency or ombudsman program shall immediately, or as soon as practically possible, report this information to the appropriate licensing agency. The licensing agency shall investigate the report in light

of the potential for physical harm. The transmittal of information to the appropriate licensing agency shall not relieve the adult protective services agency or local law enforcement agency or ombudsman program of the responsibility to continue its own investigation as required under applicable provisions of law. The information reported pursuant to this paragraph shall remain confidential and shall not be disclosed.

(c) A local law enforcement agency shall immediately, or as soon as practically possible, report by telephone to the long-term care ombudsman program when the abuse is alleged to have occurred in a long-term care facility or to the county adult protective services agency when it is alleged to have occurred anywhere else, and to the agency given responsibility for the investigation of cases of elder and dependent adult abuse every known or suspected instance of abuse of an elder or dependent adult. A local law enforcement agency shall also send a written report thereof within two working days of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

(d) A long-term care ombudsman coordinator may report the instance of abuse to the county adult protective services agency or to the local law enforcement agency for assistance in the investigation of the abuse if the victim gives his or her consent. A long-term care ombudsman program and the Licensing and Certification Division of the State Department of Public Health shall immediately report by telephone and in writing within two working days to the bureau any instance of neglect occurring in a health care facility that has seriously harmed any patient or reasonably appears to present a serious threat to the health or physical well-being of a patient in that facility. If a victim or potential victim of the neglect withholds consent to being identified in that report, the report shall contain circumstantial information about the neglect, but shall not identify that victim or potential victim. The bureau and the reporting agency shall maintain the confidentiality of the report until the report becomes a matter of public record.

(e) When a county adult protective services agency, a long-term care ombudsman program, or a local law enforcement agency receives a report of abuse, neglect, or abandonment of an elder or dependent adult alleged to have occurred in a long-term care

facility, that county adult protective services agency, long-term care ombudsman coordinator, or local law enforcement agency shall report the incident to the licensing agency by telephone as soon as possible.

(f) County adult protective services agencies, long-term care ombudsman programs, and local law enforcement agencies shall report the results of their investigations of referrals or reports of abuse to the respective referring or reporting agencies.

SEC. 9. Section 15655.5 of the Welfare and Institutions Code is amended to read:

15655.5. A county adult protective services agency shall provide the organizations listed in paragraphs (v), (w), and (x) of Section 15610.17, and mandated reporters of suspected financial abuse of an elder or dependent adult pursuant to Sections 15630.1 and 15630.2, with instructional materials regarding abuse and neglect of an elder or dependent adult and their obligation to report under this chapter. At a minimum, the instructional materials shall include all of the following:

(a) An explanation of abuse and neglect of an elder or dependent adult, as defined in this chapter.

(b) Information on how to recognize potential abuse and neglect of an elder or dependent adult.

(c) Information on how the county adult protective services agency investigates reports of known or suspected abuse and neglect.

(d) Instructions on how to report known or suspected incidents of abuse and neglect, including the appropriate telephone numbers to call and what types of information would assist the county adult protective services agency with its investigation of the report.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement

to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Approved _____, 2013

Governor